

<p>This Opinion is Not a Precedent of the TTAB</p>

Mailed: February 13, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re CMH United Corp.

Serial No. 85863243
Serial No. 85863317

Mark D. Passler of Akerman LLP,
for CMH United Corp.

Joanna E. H. Fiorella, Trademark Examining Attorney, Law Office 105,
Susan Hayash, Managing Attorney.

Before Quinn, Bergsman and Hightower,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

CMH United Corp. (“Applicant”) seeks registration on the Principal Register of the marks KODIAK (in standard characters)¹ and KODIAK MOBILE TECHNOLOGY and design (shown below),²

¹ Application Serial No. 85863243 was filed on February 28, 2013, based upon Applicant’s claim of first use anywhere since at least as early as March 2011 and use in commerce since at least as early as August 2011.

² Application Serial No. 85863317 was filed on February 28, 2013, based upon Applicant’s claim of first use anywhere since at least as early as March 2011 and use in commerce since at least as early as August 2011.



both for “accessories for cellular phones and tablet computers, namely, cases, screen protectors, styluses and cell phone battery chargers,” in Class 9.

In the KODIAK MOBILE TECHNOLOGY and design mark application, Applicant described the mark as consisting “of the stylized wording ‘KODIAK MOBILE TECHNOLOGY’ with 4 claw marks over the letter ‘O’ in ‘KODIAK’ and a paw located within a circle over the letter ‘K’ in ‘KODIAK’.” Applicant disclaimed the exclusive right to use the terminology “Mobile Technology.”

The Trademark Examining Attorney has refused registration of Applicant’s mark under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d), on the ground that Applicant’s marks so resemble the registered mark KODIAK NETWORKS (in typed drawing form) for the goods listed below as to be likely to cause confusion:

Wireless telecommunications equipment consisting of cellular mobile telecommunications switches; location and equipment registers; packet data switching and gateways; radio base stations; radio transmitters, receivers, transceivers, repeaters; antennas, wireless customer terminal software for enabling wireless services in mobile telephones, and portable computers; transmission equipment, namely, receivers, transceivers, repeaters/regenerators; compressors, multiplexers; global computer networking equipment, namely, routers, gateways, bridges, nodes, servers, firewalls; global computer network terminals and appliances for interconnecting and interfacing with telecommunications

networks; telecommunications traffic handling and processing equipment for caching, compression, multiplexing, protocol conversion, load balancing and traffic management; operational support systems comprising computer hardware and software for providing customer service and transferring call records and billing information; network management systems comprising computer hardware and software for tracking all network transactions and sending network alarms; test equipment and performance measurement systems comprising computer hardware and software for analyzing, measuring and optimizing performance of the aforementioned goods; software for operating and controlling the aforementioned goods, in Class 9.³

Registrant disclaimed the exclusive right to use the word “Networks.”

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

We consolidate the appeals because the marks in the two applications are similar, the goods are identical, and the records in the two applications are essentially the same. References to the record are to application Serial No. 85863243 unless otherwise indicated.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion

³ Registration No. 3090558 registered on May 9, 2006; Sections 8 and 15 affidavits accepted and acknowledged.

analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”). These factors, and any other relevant *du Pont* factors in the proceeding now before us, will be considered in this decision.

A. The similarity or dissimilarity of the marks in their entirety in terms of appearance, sound, connotation and commercial impression.

We turn first to the *du Pont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *In re E. I. du Pont De Nemours & Co.*, 177 USPQ at 567. In a particular case, “finding of similarity as to any one factor (sight, sound or meaning) alone ‘may be sufficient to support a holding that the marks are confusingly similar.’” *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988) (citations omitted). *See also In re Lamson Oil Co.*, 6 USPQ2d 1041, 1042 (TTAB 1987). In comparing the marks, we are mindful that “[t]he proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (citation omitted). *See also San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff’d mem.*,

972 F.2d 1353 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

1. KODIAK in standard character form.

Applicant is seeking to register the mark KODIAK in standard character form. The mark in the cited registration is KODIAK NETWORKS in typed drawing form. Prior to November 2, 2003, “standard character” drawings were known as “typed” drawings. A typed mark is the legal equivalent of a standard character mark. TMEP § 807.03(i) (January 2015). Marks presented in standard or typed characters are not limited to any particular depiction. The rights associated with a mark in standard or typed characters reside in the wording and not in any particular display. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1909-11 (Fed. Cir. 2012); *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983); *In re RSI Systems, LLC*, 88 USPQ2d 1445, 1448 (TTAB 2008); *In re Pollio Dairy Products Corp.*, 8 USPQ2d 2012, 2015 (TTAB 1988).

In the registered mark, the name KODIAK is the dominant element because the word NETWORKS is descriptive and has been disclaimed as evidenced by the fact that Registrant’s goods are used for networking equipment (*e.g.*, global computer networking equipment, namely, routers, gateways, bridges, nodes, servers, firewalls; global computer network terminals and appliances for interconnecting

and interfacing with telecommunications networks). It is well-settled that disclaimed, descriptive matter may have less significance in likelihood of confusion determinations. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) (“Regarding descriptive terms, this court has noted that the ‘descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.’”) (*quoting In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1983)); *In re Dixie Rests. Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001) (disclaimed matter is often “less significant in creating the mark’s commercial impression”).

While noting that the name KODIAK is the dominant element of Registrant’s mark, we are cognizant that the similarity or dissimilarity of the marks is determined based on the marks in their entirety and that the analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *In re National Data Corp.*, 224 USPQ at 751. However, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entirety. *In re National Data Corp.*, 224 USPQ at 751.

The position of the word KODIAK as the first word of the mark KODIAK NETWORKS further reinforces the importance of KODIAK as the dominant element of the mark. *See Presto Products Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered”). *See also Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005) (“Veuve” is the most prominent part of the mark VEUVE CLICQUOT because “veuve” is the first word in the mark and the first word to appear on the label); *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992) (upon encountering the marks, consumers will first notice the identical lead word).

Applicant’s mark KODIAK and the dominant element KODIAK of Registrant’s mark KODIAK NETWORKS are identical. In similar circumstances, where the registrant’s mark incorporates an applicant’s entire mark, the Board has found that the marks are similar. *See In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010) (applicant’s mark ML is similar to registrant’s mark ML MARK LEES); *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406, 407 (CCPA 1967) (THE LILLY as a mark for women's dresses is likely to be confused with LILLI ANN for women's apparel including dresses); *In re United States Shoe Corp.*, 229 USPQ 707, 709 (TTAB 1985) (CAREER IMAGE for women's clothing stores and women's clothing likely to cause confusion with CREST CAREER IMAGES for uniforms including items of women's clothing). In *United*

States Shoe, the Board observed that “Applicant's mark would appear to prospective purchasers to be a shortened form of registrant's mark.” 229 USPQ at 709. *See also Marshall Field & Co. v. Mrs. Fields Cookies*, 25 USPQ2d 1321, 1333 (TTAB 1992) (“[C]ompanies are frequently called by shortened names, such as, Penney's for J.C. Penney's, Sears for Sears and Roebuck (even before it officially changed its name to Sears alone), Ward's for Montgomery Ward's, and Bloomies for Bloomingdale's.”).

In view of the foregoing, we find that Applicant's mark KODIAK is similar to Registrant's mark KODIAK NETWORKS.

2. KODIAK MOBILE TECHNOLOGY and design.

Applicant is also seeking to register the mark KODIAK MOBILE TECHNOLOGY and design shown below:



We find that the name KODIAK is the dominant element of Applicant's mark because the name KODIAK is the largest and most prominent feature of Applicant's mark. It is the word KODIAK that catches the attention of consumers. Further, Applicant has disclaimed the exclusive right to use the term MOBILE TECHNOLOGY because it is merely descriptive.⁴

⁴ In the June 17, 2013 Office Action, the Trademark Examining Attorney required Applicant to disclaim the exclusive right to use the term MOBILE TECHNOLOGY “because it merely describes a use for applicant's goods ... namely, that they are products used for devices featuring mobile technology.” In its December 17, 2013 response to the Office Action, Applicant disclaimed the exclusive right to use the term MOBILE TECHNOLOGY.

With respect to the design portion of Applicant's mark, the words are normally given greater weight because they would be used by consumers to request the products. *In re Viterra Inc.*, 101 USPQ2d at 1911 (citing *CBS Inc. v. Morrow*, 708 F.2d 1579, 1581-82, 218 USPQ 198, 200 (Fed. Cir. 1983)); *Fashions Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793, 1798 (Fed. Cir. 1987).

To be sure, there are differences in the marks KODIAK MOBILE TECHNOLOGY and design and KODIAK NETWORKS. But in giving greater force and effect to the dominant portion of the marks (the word KODIAK), we find that the similarities in appearance, sound, connotation and commercial impression outweigh the dissimilarities.

B. The similarity or dissimilarity and nature of the goods.

In determining whether the goods are related, it is not necessary that the goods listed in the application and the cited registration be similar or competitive in character to support a holding of likelihood of confusion; it is sufficient for such purposes that a party claiming damage establish that the goods are related in some manner and/or that conditions and activities surrounding marketing of these goods are such that they would or could be encountered by same persons under circumstances that could, because of similarities of marks used with them, give rise to the mistaken belief that they originate from or are in some way associated with the same producer. *Coach Servs., Inc. v. Triumph Learning LLC*, 101 USPQ2d at 1722; *Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1410 (TTAB 2010); *Schering Corporation v. Alza Corporation*, 207 USPQ 504, 507 (TTAB 1980);

Oxford Pendaflex Corporation v. Anixter Bros. Inc., 201 USPQ 851, 854 (TTAB 1978).

Where, as here, the marks are very similar, the degree of similarity between the goods required to support a finding of likelihood of confusion declines. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688-1689 (Fed. Cir. 1993) (“even when the goods or services are not competitive or intrinsically related, the use of identical marks can lead to the assumption that there is a common source”); *Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650 (TTAB 2002); *In re Opus One Inc.*, 60 USPQ2d 1812 (TTAB 2001). It is only necessary that there be a viable relationship between the two to support a finding of likelihood of confusion. *In re Concordia International Forwarding Corp.*, 222 USPQ 355, 356 (TTAB 1983). The issue here, of course, is not whether purchasers would confuse the parties’ goods, but rather whether there is a likelihood of confusion as to the source of those goods. *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984).

Finally, under this *du Pont* factor, the Trademark Examining Attorney need not prove, and we need not find, similarity as to each and every product listed in the Class 9 description of goods. It is sufficient for a refusal based on likelihood of confusion that relatedness is established for any item encompassed by the identification of goods in the application and cited registration. *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *Apple Computer v. TVNET.Net, Inc.*, 90 USPQ2d 1393, 1398 (TTAB 2007).

The Trademark Examining Attorney introduced copies of numerous use-based, third-party registrations comprising products that are in both Applicant's description of goods and the description of goods in the cited registration.⁵ Third-party registrations which individually cover a number of different goods that are based on use in commerce may have some probative value to the extent that they serve to suggest that the listed goods are of a type which may emanate from the same source. *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988).⁶

The registrations listed below are representative.

MARK	REG.NO.	GOODS
G4U	3950598	Network routers; battery chargers, carrying cases and protective cases for cell phones
HTC	4191796	Wireless signal device gateways, extenders and signal boosters, antennas, battery chargers, covers, pouches, screen guards and protectors
VITALASC	4159186	Computer stylus, laptop carrying cases, battery packs for laptops, tablet computers and cell phones, computer network adapters, switches, routers, and hubs, wireless network extenders,
ZMART	4402495	Computer network hubs, switches, and routers, battery chargers, protective covers and cases for cell phones, laptops and portable media players

⁵ July 31, 2013 and October 21, 2013 Office actions.

⁶ We did not insert the entire description of goods for each registration. We have listed only the goods relevant in these appeals. Also, we did not consider Registration No. 4096966 for the mark LINK NET or Registration No. 4282085 for the mark YBY VAMPIRE KILLER because the registrations did not include goods in both Applicant's description of goods and the description of goods in the cited registration. Finally, we note that the Trademark Examining Attorney submitted 4 registrations owned by IC Intracom Holdings, LLC, 2 registrations owned by Sprint Communications Company L.P., and 2 registrations owned by Hon Hai Precision Co., Ltd. Multiple registrations owned by single entity are unnecessary because they are cumulative.

MARK	REG.NO.	GOODS
SYNRGIC	4408446	Carrying cases, holders, and protective cases, battery chargers, antennas, mobile computing and operating platforms consisting of data transceivers, wireless networks and gateways for the collection and management of data

The Trademark Examining Attorney also submitted evidence of the third parties listed below using the same marks to identify products that are covered by both descriptions of goods:

1. Apple (store.apple.com) advertises the sale of routers and iPad and iPhone covers and cases and charging devices;⁷

2. Belkin (belkin.com) advertises the sale of surge protectors, charging devices, screen protectors, smart phone cases, and tablet cases, styluses, as well as wireless switches, motion kits for wireless control of home appliances and electronics, routers, and range extenders;⁸

3. Motorola (motorola.com) advertises the sale of cases, power packs, and chargers, as well as a bridge (a wireless connectivity device that increases equipment efficiency), wireless controllers and switches, wireless access points to extend efficiency, and antennas;⁹

4. Dell (dell.com) advertises tablet cases, batteries, styluses, and switches;¹⁰

⁷ June 17, 2013 Office Action.

⁸ June 17, 2013 Office Action.

⁹ June 17, 2013 Office Action.

¹⁰ January 30, 2014 Office Action.

5. Hewlett Packard (shopping.hp.com) advertises tablet and folio cases, styluses, charging stands, and networking switches;¹¹

6. ASUS (asus.com) advertises the sale of equipment cases, backpacks, travel covers, as well as routers, range extenders, bridges, and antennas;¹²

7. Rocketfish (rocketfishproducts.com) advertises the sale of cases for tablets, charging devices, as well as extenders, including transmitters and receivers;¹³

8. Sonus (sonus.com) advertises the sale of replacement batteries and wireless bridges;¹⁴

9. WD (wdc.com) advertises the sale of cases for portable hard drives and servers;¹⁵

10. Samsung (samsung.com) advertises the sale of wireless charging pads, styluses, carrying cases, and routers;¹⁶ and

11. Sony (sony.com) advertises the sale of cases, router switches, and power supplies.¹⁷

Applicant argues that (i) the goods are entirely different, (ii) there is not one single product in the descriptions of goods that are the same,¹⁸ and (iii) “this

¹¹ January 30, 2014 Office Action.

¹² August 20, 2014 Office Action.

¹³ August 20, 2014 Office Action.

¹⁴ August 20, 2014 Office Action.

¹⁵ August 20, 2014 Office Action.

¹⁶ August 20, 2014 Office Action.

¹⁷ August 20, 2014 Office Action.

¹⁸ Applicant’s Brief, p. 11.

relationship [between] the goods is too attenuated to find product ‘relatedness.’”¹⁹

However, as indicated above, the issue is not whether consumers will confuse the goods; rather, the issue is whether consumers will think that the goods emanate from the same source. The evidence shows that although the goods are different, they are of a type that may emanate from a single source.

Applicant references searches that it did in the USPTO search database demonstrating that “[t]he overwhelming majority of suppliers of Registrant’s goods (radio transmitters, receivers, repeaters, etc.) do not sell Applicant’s goods. Similarly, the vast majority of suppliers of Applicant’s goods do not sell Registrant’s goods.”²⁰ Applicant contends that “more often than not, Applicant’s Goods and Registrant’s Goods *are not* offered by a single source under the same trademark.”²¹ The Board has previously held that such sets of third-party registrations submitted to suggest that the goods are not related, while relevant, do not necessarily prove that the goods are not related because they do not negate the probative value of the registrations submitted by the Trademark Examining Attorney.

It [the evidence submitted by applicant] simply consists of registrations that list one of applicant's goods but do not include any goods that are in the cited registration, or registrations that list one of the goods in the cited registration but do not include any of applicant's identified goods. We give this evidence much less weight. There is no requirement for goods to be found related that all or even a majority of the sources of one product must also be sources of the other product. Therefore, evidence

¹⁹ Applicant’s Brief, p. 13.

²⁰ Applicant’s Brief, p. 14.

²¹ Applicant’s Brief, p. 13.

showing only that the source of one product may not be the source of another product does not aid applicant in its attempt to rebut the evidence of the examining attorney. Second, the mere fact that some goods are not included in a registration's identification of goods does not establish that the owner of the mark has not registered the mark for those goods in another registration since, for example, the registrant may have begun using the mark on those goods at a later date.... The fact that applicant was able to find and submit for the record these registrations of marks for individual items does not rebut the examining attorney's evidence showing the existence of numerous third-party registrations using the same marks on a variety of items, including applicant's and registrant's goods. Therefore, contrary to applicant's argument (Reply Brief at 7), while this evidence provides some indication that there are many trademarks that are not registered for both products, it does not rebut the examining attorney's evidence that the goods are related.

In re G.B.I. Tile and Stone Inc., 92 USPQ2d 1366, 1370 (TTAB 2009).

In an effort to rebut the inference we might draw from the third-party registrations as serving to suggest that the goods are a type that may emanate from the same source, “Applicant conducted an Internet search to see the manner in which a number of the Examining Attorney’s cited marks were used and found that there [sic] were either not in use at all, or they were used on goods that were sold separately, or where used more accurately in connection with the retail sale of the goods rather than as an actual brand.”²² However, Applicant’s evidence is not sufficient to rebut the inference because there is no requirement that all the goods listed in the registrations must be advertised on the Internet. Further, Applicant submitted only one or two Internet excerpts for the few third-party marks it

²² Applicant’s Brief, p. 15.

addressed to prove its point. For example, Applicant submitted only one excerpt to show the mark HTC used in connection with mobile device accessories but not on networking products. Finally, the Trademark Examining Attorney did not rely solely on third-party registration evidence; the Trademark Examining Attorney also submitted evidence of actual third-party use of marks in connection with the goods listed in both descriptions of goods.

In its Reply Brief, Applicant asserts that manufacturers use different product marks to distinguish their mobile accessories and networking devices.²³ While many manufacturers use different product marks, these manufacturers also display their house marks (*e.g.*, APPLE, BELKIN, SONY, *etc.*) in connection with these products. House marks are no less important, and may be more so, than product marks in identifying the source of the products so labeled. Even if consumers perceive these marks to be house marks used in connection with other product marks, this would not dispel confusion as to sponsorship or affiliation. “In general, use of a house mark does not obviate confusion.” *In re Mighty Leaf Tea*, 94 USPQ2d at 1260; *General Mills Inc. v. Fage Dairy Processing Industry SA*, 100 USPQ 1584, 1602 (TTAB 2011).

We find that the goods are related.

C. Established, likely-to-continue channels of trade and classes of consumers.

The Trademark Examining Attorney submitted excerpts from the websites of BEST BUY (bestbuy.com), GEEKS.com, and OfficeMax (officemax.com) to prove

²³ Applicant’s Reply Brief, pp. 4-11.

that these retailers sell the type of goods listed in both descriptions of goods and, therefore, the goods move in the same channels of trade.²⁴ Applicant argues that the above-noted retailers are “mass marketers” who sell many things. However, because BEST BUY, GEEKS.com, and OfficeMax are mass marketers does not alter the fact that they sell the types of goods listed in both descriptions of goods. In fact, Applicant notes that “Office Max [sic] has one online category for ‘wireless phone cases & covers,’ and other [sic] for ‘networking equipment,’ with subcategories for ‘switches,’ ‘routers,’ ‘rack enclosures,’ etc.”²⁵

Applicant also contends that “the evidence of record confirms that mobile accessories are sold largely by online retailers specializing in merchandise (*e.g.*, Zazzle, Skin It, etc. *supra*), mall kiosks, vending machines, and, of course, big box electronics and general merchandise stores like Office Max [sic], Best Buy, and Geeks.”²⁶ The fact that mobile accessories may be sold in multiple channels of trade, some of which do not include wireless networking equipment, does not change the fact that mobile accessories and networking equipment also move in some of the same channels of trade.

We find the goods in the application and the cited registration move in the same channels of trade.

²⁴ January 30, 2014 Office Action.

²⁵ Applicant’s Brief, p. 18.

²⁶ Applicant’s Reply Brief, pp. 11-12.

- D. The conditions under which and buyers to whom sales are made, i.e. “impulse” vs. careful, sophisticated purchasing.

Applicant argues that the target consumers for the wireless networking equipment listed in the cited registration are “specialized, credentialed network engineers” “who are careful and sophisticated consumers, not susceptible to confusion based on small similarities in trademarks on otherwise wholly disparate goods.”²⁷ According to Applicant’s counsel, these engineers request quotes from a number of sales representatives for building networks comprising multiple pieces of equipment. “After significant communications and exchange of ideas, the sales representatives will submit their quotes to the engineer for all the products necessary to set up their entire network. These quotes typically are hundreds of thousands of dollars.”²⁸

Registrant’s description of goods is not limited to network engineers for building complex communications networks. The Belkin website (belkin.com) advertises switches and motion kits for home appliances and electronics.²⁹ The APPLE AirPort Express router is for individuals to set up wireless networks in their home.³⁰ The Best Buy website advertises wireless switches, modems, and routers offered for sale to the general public.³¹ Based on the foregoing, Applicant is trying to restrict the nature of the goods, channels of trade and classes of consumers without establishing

²⁷ Applicant’s Brief, p. 5.

²⁸ Applicant’s Brief, pp. 5-6.

²⁹ June 17, 2013 Office Action.

³⁰ June 17, 2013 Office Action.

³¹ January 30, 2014 Office Action.

that the proposed limitations are inherent in the nature of the goods. *See In re Bercut-Vandervoort & Co.*, 229 USPQ 763, 764 (TTAB 1986) (evidence that relevant goods are expensive wines sold to discriminating purchasers must be disregarded given the absence of any such restrictions in the application or registration).

While we have no doubt that consumers will exercise a heightened degree of care purchasing wireless networking products, those same consumers may mistake one similar trademark for another when such marks cover products in the same general field because they are not likely to note the differences in the marks. *Hydrotechnic Corp. v. Hydrotech International, Inc.*, 196 USPQ 387, 392-93 (TTAB 1977); *Educational Development Corp. v. Educational Dimensions Corp.*, 183 USPQ 492, 496 (TTAB 1974). Even careful purchasers who do notice the difference in the marks will not necessarily conclude that there are different sources for the goods, but will see the marks as variations of each other, pointing to a single source. *See, e.g., Kangol Ltd. v. Kangaroos U.S.A., Inc.*, 974 F.2d 161, 23 USPQ2d 1945, 1946 (Fed. Cir. 1992) (“What is important is not whether people will necessarily confuse the marks, but whether the marks will be likely to confuse people into believing that the goods they are purchasing emanate from the same source.”) (citations omitted). Accordingly, we find this *du Pont* factor to be neutral.

E. Balancing the factors.

Because the marks are similar, the goods are related and the goods move in the same channels of trade, we find that Applicant’s marks KODIAK and KODIAK MOBILE TECHNOLOGY and design, both for “accessories for cellular phones and

tablet computers, namely, cases, screen protectors, styluses and cell phone battery chargers,” are likely to cause confusion with the registered mark KODIAK NETWORKS for the goods set forth in that registration.

Decision: The refusals to register Applicant’s marks KODIAK and KODIAK MOBILE TECHNOLOGY and design are affirmed.